

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SAMAR RAMON AKINS,)	4:01CV3013
)	
Petitioner,)	
vs.)	MEMORANDUM
)	AND ORDER
MICHAEL L. KENNEY,)	
)	
Respondent.)	

This matter is before the court on the petitioner's notice of appeal (filing 94), motion for a certificate of appealability (filing 95), and motion for leave to proceed in forma pauperis (filing 96). The notice of appeal is filed with reference to the court's memorandum and order of February 7, 2008 (filing 92), which denied the petitioner's application for habeas relief pursuant to 28 U.S.C. § 2254. Judgment was entered that same date (filing 93).

Before the petitioner's appeal can proceed, a certificate of appealability must issue. *See* Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a district court has rejected a constitutional claim on the merits in the course of denying a § 2254 motion, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" in order to meet the standard contained in § 2253(c). *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In contrast, when a district court denies a § 2254 motion on procedural grounds without reaching the applicant's underlying constitutional claims on the merits, a certificate of appealability should issue under § 2253(c) when "the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a

constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.*

After careful consideration of the petitioner’s motion, the court concludes, for the reasons that were previously set forth in the memorandum and order of February 7, 2008 (filing 92), that the petitioner has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c). Therefore, a certificate of appealability shall not issue in this case.

Because the appeal appears to be taken in good faith, even though a certificate of appealability will not issue, the petitioner may continue to proceed in forma pauperis pursuant to Federal Rule of Appellate Procedure 24(a)(3).

IT IS ORDERED that:

1. The petitioner’s motion for a certificate of appealability (filing 95) is denied, and a certificate of appealability shall not issue in this case;
2. The petitioner’s motion to proceed in forma pauperis on appeal (filing 96) is granted; and
3. The Clerk of the Court shall transmit a copy of this memorandum and order to the United States Court of Appeals for the Eighth Circuit.

February 28, 2008.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge